**ABDUL KHAFAR HJ TERMIZI**

**v.**

**FANG YANG HUE**

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL APPEAL NO: 12-312-2000]
21 NOVEMBER 2002

***ROAD TRAFFIC:*** *Negligence - Motorcyclist colliding into rear of car - Motorcar stationary in emergency lane - Whether an offence to park vehicle when no emergency arises - Road Transport Rules 1957, r. 53 - Whether punishable under s. 48 of Road Transport Act 1987 - Whether defendant protected by r. 53(2) Road Transport Rules 1957 - Failure to comply with traffic regulations or provide warning signs - Whether liability established*

The deceased had collided into the rear of the defendant's car that was stationary by the side of the emergency lane. The deceased's mother had claimed for damages for loss of support where the sessions court judge had found the defendant liable and awarded a multiplier of seven years with a multiplicand of RM400 per month amounting to RM33,600 and a further sum of RM2000 as funeral expenses. Dissatisfied with the said decision the defendant appealed only on liability.

**Held:**

**[1]** Rule 53 of the Road Transport Rules 1957 clearly stipulated that it was an offence to leave a vehicle in the emergency lane when there was no emergency and that such an offence was punishable under s. 48 of the Road Transport Act 1987. (p 220 c-d)

**[2]** The defendant was a sub-contractor for Tenaga Nasional Berhad laying electric cables along the said highway. He had alighted from the car to check on his workers' progress. However he could not avail himself of r. 53(2) of the Road Transport Rules 1957 because he led no evidence to show that the work he was doing fell within the protection granted by r. 53(2). Even assuming the defendant did have the right to park his vehicle at the emergency lane, he failed to comply with traffic regulations or provide warning signs, thus causing an obstruction to the deceased motorcyclist. (pp 219 c-d & 220 e)

**[3]** The sessions court judge was correct in finding the defendant liable, and he was also correct in holding the deceased 20 percent liable in contribution for riding along the emergency lane. (p 220 b)

*[Appeal dismissed with costs.]*

**Legislation referred to:**
Road Transport Act 1987, s. 48
Road Transport Rules 1957, r. 53(2)

*For the appellant/defendant - VK Dasaratharaj Pillai; M/s VP Nathan & Partners*
*For the respondent/plaintiff - S Balasundram; M/s Manjit & Co*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**RK Nathan J:**

**Plaintiff's Case**

The deceased was riding motorcycle No. PBP 1042 on 3 October 1996 at about 11am along Lebuh Raya Utara Selatan and proceeding from the direction of Nibong Tebal towards Butterworth, when a collision occurred between the deceased motorcycle and motorcar BEH 4883 driven by the defendant. It was the deceased's case as pleaded that the defendant who was proceeding ahead suddenly and without warning stopped his motorcar along the emerging lane, causing the deceased to collide into the rear of the said car. The deceased's mother brought this action for damages for loss of support.

**Case For The Defendant**

In his defence the defendant admitted the collision and also admitted that he had stopped by the side of the emergency lane. In his particulars of negligence para. (b) the defendant pleaded that the deceased collided into the rear of his car that was stationary by the side of the emergency lane.

**Findings Of The Sessions Court**

The learned sessions judge found the defendant 80% liable and the deceased 20% and awarded a multiplier of seven years for the 69 year old mother with a multiplicand of RM400pm amounting to RM33,600 and a further sum of RM2,000 as funeral expenses. Dissatisfied with the said decision the defendant appealed only on liability.

**Evidence Led At Trial**

The 1st witness for the plaintiff was the investigating officer who testified that no vehicle could be parked on the emergency lane unless when an emergency had occurred. He also testified that the motorcycle was damaged at the front

whilst all the damages to the defendant's motorcar were to the rear including the rear window which was broken. Under cross-examination he confirmed that there was no special lane for motorcycles along that stretch of the road. He testified that motorcycles ought not to be ridden on the emergency lane. To a question from the court he admitted that he had not checked to see if the said car had actually broken down. He further testified that if the driver of the car had stopped at the emergency lane to look for his workers that would not constitute an emergency.

The defendant testified that at the material time he was a sub-contractor for Tenaga National Berhad laying electric cables along the said highway. When he reached the scene of the accident he stopped at the emergency lane. He then instructed one of his workers to control the traffic since the vehicle that was transporting the sign board to be fixed, had not arrived. He then alighted from his car and descended to a place beside the highway to check the work in progress. About ten minutes later he heard the sound of a collision. He then climbed up the embankment and saw that a motorcyclist had collided into the rear of his car.

Under cross-examination he confirmed that the contents of his police report contained the truth. He also admitted that before he had alighted he did not give his hazard signal nor did he put up the triangular warning sign some distance behind his car. He also confirmed that on that day he actually had not faced any emergency although he knew he ought not to stop at the emergency lane and only stopped there to look for his workers down the slope. He also admitted that had he not stopped at that lane there would have been no such collision. He was honest enough to even admit that he failed to comply with the traffic regulations and that he had caused an obstruction to the deceased motorcyclist.

**Findings Of The Court**

Mr Dasaratharaj for the appellant urged me to allow his appeal and to dismiss this claim. I was actually taken aback by such an audacious submission. I then asked counsel to explain the difference in the evidence of his client as stated in the police report and in his evidence given in court.

In court the defendant had said that after he had stopped for 5 - 10 minutes the deceased collided into his motorcycle. However in the police report he had said that as he stopped and alighted, suddenly the motorcycle collided into his motorcar. Mr Dasaratharaj merely pointed out to bits and pieces of the defendant's evidence without specifically addressing the issue raised by me.

Although the defendant failed to call corroborative evidence through his workers to show that he was actually working at that site and therefore had stopped there to look for his workers, I accept his evidence on this since on his own admission he had confirmed that there was no emergency to cause him to stop there.

In the light of his various admissions and in the light of his contradictory evidence in court and as shown in the police report the learned sessions judge was correct in finding the defendant liable. He was also correct in holding the deceased 20% liable in contribution for riding along the emergency lane.

Rule 53 of the Road Transport Rules 1957 clearly stipulates that it is an offence to leave a vehicle in the emergency lane when there is no emergency and that such an offence is punishable under s. 48 of the Road Transport Act 1987.

However Rule 53(2) reads:

> Subrule (1) shall not apply to certain specified classes and description of vehicles driven by any person engaged by the Minister charged with the responsibility for works in relation to a Federal road or by the authorised person under subsection 2(1) of the Federal Roads (Private Management) Act 1984 his agents, assigns and authorised representatives to carry out any work on Federal road or its adjacent areas.

But unfortunately the defendant cannot avail himself of this r. 53(2) because he led no evidence to show that the work he was doing fell within the protection granted by r. 53(2). Even assuming the defendant did have the right to park his vehicle at the emergency lane, he failed to provide warning signs. But in this case it is clear that he had stopped suddenly because his report shows that as soon as he had stopped and alighted, immediately the collision occurred. That means he had failed to look into his rear mirror to ensure it was safe before stopping suddenly.

Having considered all the factors, I dismissed the appeal with costs.